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**Attorneys for Defendants, Nationwide Mutual Insurance Company and  
Allied Property & Casualty Insurance Company**

**THE UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

MARY ALICE CAMPBELL, an individual,

CASE NO. 8:14-cv-00091-JLS-DFM

**Plaintiff,**

v.  
**NATIONWIDE MUTUAL  
INSURANCE COMPANY**, a mutual  
corporation; **ALLIED PROPERTY  
AND CASUALTY INSURANCE  
COMPANY**, a corporation, and DOES  
1 through 50, inclusive.

**NOTICE OF MOTION AND  
MOTION OF DEFENDANTS' FOR  
SUMMARY JUDGMENT OR, IN  
THE ALTERNATIVE PARTIAL  
SUMMARY JUDGMENT**

Hearing Date: October 30, 2015  
Hearing Time: 2:30 P.M.  
Location: Courtroom 10A  
Judge: Hon. Josephine L. Staton

**TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

**PLEASE TAKE NOTICE** that on **October 30, 2015, at 2:30 P.M.** in  
**Courtroom 10A**, of the U.S. District Court for the Central District of California,  
located at 411 West Fourth Street, Santa Ana, California 92701, before Honorable  
Josephine L. Staton, Defendants NATIONWIDE MUTUAL INSURANCE  
COMPANY (“NMIC”) and ALLIED PROPERTY AND CASUALTY  
INSURANCE COMPANY (“Allied”) (collectively “Defendants”) will and does  
hereby move this Court for Summary Judgment of Plaintiff MARY ALICE

1 CAMPBELL'S ("Plaintiff") Complaint on file in this action, or in the Alternative,  
2 for Partial Summary Judgment, pursuant to Rule 56 of the Federal Rules of Civil  
3 Procedure ("FRCP"), of the causes of action contained therein for negligence,  
4 breach of covenant of good faith and fair dealing, intentional infliction of  
5 emotional distress, conversion, and trespass to chattel, breach of contract and  
6 Plaintiff's claim for punitive damages.

7 This motion is made pursuant to FRCP 56 on the grounds that there is no  
8 triable issue of fact establishing Defendants breached the insurance contract on the  
9 grounds NMIC did not issue the policy or participate in investigation and  
10 adjudication of the claim, and because of Plaintiff's material breaches of the  
11 insurance policy in failing to submit to an examination under oath and to cooperate  
12 with Allied's investigation of the claim, causing substantial prejudice to Allied,  
13 thereby excusing any liability of Allied under the policy. The motion is also made  
14 on the ground the uncontested facts establish Plaintiff cannot present evidence  
15 essential to her claims for negligence, conversion, trespass to chattel, breach of  
16 covenant of good faith and fair dealing, intentional infliction of emotional distress  
17 and punitive damages, and thus, each cause of action fails as a matter of law. In  
18 the alternative, Defendants seek partial summary adjudication as to each of the  
19 claims raised herein.

20 In making the above-described motion, Defendants seeks the following  
21 specific determinations from the Court:

- 22 1. NMIC did not issue the Policy and was not involved in the  
23 investigation and adjudication of Plaintiff's insurance claim at issue,  
24 and Plaintiff lacks sufficient evidence from which a jury could find  
25 any liability against NMIC as to each cause of action in the  
26 Complaint.

- 1       2. Plaintiff cannot meet the essential elements of Negligence and the  
2       claims fails as a matter of law. It is undisputed Atterholt  
3       Construction & Interiors, Inc. (“ACI”) and All County Environmental  
4       & Reconstruction, Inc. (“All County”) are not agents of Defendants.  
5       Even so, Allied as the insurer cannot be vicariously liable for injury or  
6       damage caused by a third-party vendor’s negligence. Further,  
7       negligence based on an insurer’s alleged breach of contract is not a  
8       cognizable claim.
- 9       3. Plaintiff lacks sufficient evidence to satisfy the elements of  
10      conversion. It is undisputed All County is not an agent of Defendants,  
11      Defendants did not store or ever take possession of any of Plaintiff’s  
12      personal property, and Defendants refused to release Plaintiff’s  
13      personal property to her.
- 14      4. Plaintiff lacks sufficient evidence to satisfy the elements of trespass to  
15      chattel. It is undisputed All County is not an agent of Defendants,  
16      Defendants did not store or ever take possession of any of Plaintiff’s  
17      personal property, and Defendants refused to release Plaintiff’s  
18      personal property to her.
- 19      5. The undisputed facts show Plaintiff materially breached the conditions  
20      of the Policy by failing to comply with her obligations and appear for  
21      her second examination and under oath reasonably necessary.  
22      Plaintiff also materially breached her obligations under the Policy by  
23      failing to cooperate in Allied’s investigation of her claim, resulting in  
24      substantial prejudice to Allied. Allied is, therefore, excused from any  
25      liability under the Policy and Plaintiff cannot support a cause of action  
26      for breach of contract.

6. Because Plaintiff cannot show a breach of contract, and, therefore, cannot support a cause of action for breach of the covenant of good faith and fair dealing as a matter of law. Notwithstanding, there is no evidence on the record supporting Allied [or NMIC, as it had no involvement in the claim] acted unreasonably or without proper cause, or otherwise consciously and deliberately frustrated or delayed Plaintiff's claim. Further, at a minimum, a genuine issue exists as to Allied's liability under the policy and whether additional policy benefits were owed to Plaintiff; thereby, precluding bad faith as a matter of law.
  7. Plaintiff lacks evidence supporting any extreme or outrageous conduct by Defendants direct at Plaintiff, or intended to cause her severe emotional distress, or otherwise performed with reckless disregard, necessary to support a claim for intentional infliction of emotional distress.
  8. There is no clear and convincing evidence supporting Defendants willfully, maliciously, and unreasonably withhold benefits with the intent to vex, annoy or Plaintiff in order to support a claim for punitive damages.
  9. Summary Judgment should be entered in Defendants' favor as to the Complaint or Partial Summary Judgment should be entered in Defendants' favor as to Plaintiff's first, second, third, fourth, fifth and sixth causes of action in the Complaint and for the claim for punitive damages consistent with the foregoing

This Motion is based upon this Notice of Motion and Motion; the accompanying Memorandum of Points and Authorities; the Separate Statement of Uncontroverted Facts and Conclusions of Law; the Declarations of Christine M.

1 Emanuelson and Jeff Mangili; Defendants' Compendium of Exhibits and the  
2 exhibits contained therein; and all pleadings, filings and records in this matter; and  
3 such other and further evidence and argument as allowed at oral hearing on this  
4 matter.

5 This motion is made following Defendants' attempt to meet and confer with  
6 Plaintiff pursuant to L.R. 7-3 on September 4, 2015. (See Declaration of Christine  
7 M. Emanuelson, Esq., ¶8).

8  
9 Dated: September 18, 2015

**HINES HAMPTON, LLP**

10 By: /s/: Christine M. Emanuelson  
11 Marc S. Hines  
12 Christine M. Emanuelson  
13 Attorneys for Defendants, Allied Property &  
Casualty Insurance Company and  
Nationwide Mutual Insurance Company

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**CERTIFICATE OF SERVICE**

I hereby certify that on **September 18, 2015**, I electronically filed the foregoing document or paper with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on **September 18, 2015**.

*Anna Cooley*  
\_\_\_\_\_  
Anna Cooley

**Manual Notice List**

Mary Alice Campbell  
1691 Orchard Dr.  
Newport Beach, CA